

**COMMISSION ON COMMON OWNERSHIP COMMUNITIES
MONTGOMERY COUNTY, MARYLAND**

Seneca Crossing I HOA,
Complainant

v.

Case #14-09

Victor Padilla,
Respondent

JUDGMENT BY DEFAULT

This dispute comes before a panel of the Commission on Complainant's application for a default judgment against Respondent.

The panel has reviewed the record and makes the following findings of fact and conclusions of law.

Findings of Fact

1. The Complainant is a homeowners association within the meaning of Section 11B-101 of the Real Property Article of the Code of Maryland, and its Covenants are filed in the land records of Montgomery County, Maryland.

2. The Respondent owns a lot subject to the covenants of the Complainant.

3. Respondent purchased his lot approximately January 8, 2008. At that time, the house on the lot had a new door unit installed by the seller of the lot. This door consisted of a brown front door with a barred window, flanked by two sidelights, which also had bars across them. The seller had applied for permission to install this door unit and the Complainant had denied permission on the grounds that the style of the door did not conform to the architectural standards of the community. Although it is not clear in exactly what way the door unit did not conform, the panel notes that the community rules prohibit safety doors and windows that have bars or grills on them. (Commission Exhibit 1, p.44.) The Complainant provided written notices to the lot owner of the violation and offered her a hearing with the board of directors, which she did not accept.

4. After Complainant learned that the lot had been sold to Respondent, it also gave Respondent written notice that the door unit was a violation of the community rules and asked him to remove it. He has not done so. It also offered him a hearing on the violation with the board of directors, which he did not accept.

5. In its motion for a default judgment, the Complainant, through counsel, alleged and submitted evidence to show that the violation was continuing at least through November 9, 2009.

6. Complainant filed a complaint against Respondent concerning the door unit on March 26, 2009, and the Commission sent a copy of this complaint to the Respondent on March 27, 2009. Respondent did not file any answer to the complaint by May 1, 2009, and on that date the Commission notified the Complainant of its right to request a default. The Commission sent a copy of this notice to the Respondent, along with a copy of the Commission's *Default Judgment Procedures*. Complainant filed for a default order on May 21, 2009.

7. On May 21, 2009, the Commission wrote to both parties advising them that the Commission would take up the dispute at its monthly meeting June 3, 2009, and inviting them both to comment upon the staff's recommendation that the Commission accept jurisdiction of the dispute and issue an order of default. Respondent filed no reply.

8. On June 3, 2009, the Commission voted to accept jurisdiction of the dispute and to grant the request for an order of default.

9. On August 31, 2009, the hearing panel issued an Order of Default, which was mailed to the Respondent the same day with a letter requiring him to show cause within 30 days why a final judgment should not issue. Respondent signed a receipt for this Order on September 1, 2009. Respondent did not reply to the Order or show-cause letter.

10. Complainant's governing documents and rules and regulations provide that if the Complainant successfully brings an action to extinguish a violation or otherwise enforce the provisions of the Declaration or Bylaws or rules, "the costs of such an action, including legal fees, shall become a binding, personal obligation of the Owner committing or responsible for such violation, and such costs shall also be a lien upon the Lot of such Owner." (Commission Exhibit 1 at 289, 208, 210, 33.)

11. Complainant has submitted an affidavit in which it states that its attorney has spent 1.5 hours in legal work on this dispute, primarily in presenting the motion for a default judgment, at the rate of \$200.00 per hour, for a total of \$300.00.

Conclusions of Law

1. The Commission has jurisdiction of this dispute pursuant to Section 10B-8(3)(A)(i) of the Montgomery County Code.

2. The Commission has jurisdiction over the Respondent.

3. The Respondent is subject to the Complainant's governing documents and rules and regulations. These documents prohibit the making of any changes to the exterior of any dwelling without the advance approval of the Complainant. They also prohibit the installation of doors and windows with bars or grills. Respondent is in violation of these documents.

4. The association documents require the Respondent to reimburse Complainant for its costs, including legal fees, for its expenses in successfully enforcing its rules.

5. Complainant's request for attorney's fees is reasonable, both in the hourly rate requested and in the total number of hours expended, and it is granted under Section 10B-13(d) of the Montgomery County Code.

ORDER

It is, therefore, this __ day of November, 2009, by the Commission on Common Ownership Communities of Montgomery County, Maryland,

ORDERED that the Respondent, Victor Padilla, shall:

1. submit an architectural application to the Complainant for, and obtain Complainant's permission for, a door and side windows to be installed on the front of the home at 21013 Scottsbury Drive, Germantown, Maryland, to replace the ones currently on the home within 30 days from the date of this Judgment;

2. remove the existing front door and side windows from his home at 21013 Scottsbury Drive, Germantown, Maryland and replace them with the approved door and side windows that comply with the rules of the community within 45 days after the date Complainant approves Respondent's architectural change application;

3. pay to the Complainant the sum of \$50.00 as its filing fee in this matter within 30 days after the date of this Judgment; and

4. pay to the Complainant \$300.00 as its legal fees in this matter within 30 days after the date of this Judgment; and it is further

ORDERED that should Respondent fail to comply with this Order, the Complainant may collect the sums due in any manner authorized by its association documents or by law.

Any party aggrieved by this decision may file an appeal to the Circuit Court of Montgomery County, Maryland within 30 days from the date of this decision pursuant to the Maryland Rules of Procedure governing appeals from administrative decisions.

Commissioners Whelan and Oxendine concur.

COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND

By: _____
Stephen Greenspan, Panel Chair
November __, 2009

cc: Seneca Crossing Homeowners Association